

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 16,
2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 217, SB 28
Executive Action: SB 1, SB 12, SB 40 & SB 177

HEARING ON SB 217

Sponsor: SEN. JOHN COBB, SD 25 AUGUSTA

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, AUGUSTA, stated that this bill tries to save time for everyone involved, when the defendants are charged with a misdemeanor, to be able to pay by simply delivering or mailing a check to the court. He explained that the content of this bill was to assist defendants, who would be unable to appear in court, could mail the payment in and this would save time on for both involved, the defendant and the court system.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked if there was any discussion with the Justice of the Peace administration for payment to be made by check. **SEN. COBB** answered that he had not received any response yet. He mentioned that this bill was set up so the judge would agree to accept the check.

Closing by Sponsor:

SEN. JOHN COBB, SD 25, AUGUSTA, summarized the need for this bill and the time saving approach it offers for the court system.

HEARING ON SB 28

Sponsor: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

Proponents: Amy Pfeifer, Staff Attorney Child Support
Enforcement Division
Donald Erickson, Self and representing his
daughter

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, pointed out the child support system, which is under Title IV of the Social Security Act and the Child Support Enforcement Division had been operating in Montana for many years providing services to those who were in need of child support enforcement. He mentioned the case Seubert vs. Seubert, which indicated a separation of powers making it a constitutional issue if the department modified a district court order.

He felt that this bill brought compliance with the Seubert vs. Seubert decision and would allow the department to continue its services for a child support order. He said that in specific cases where a district court has issued an order for child support and if someone applies for child support enforcement services, the department will complete its administrative review, issue a calculation and then it will go to the court for final approval.

Proponents' Testimony:

Amy Pfeifer, Staff Attorney Child Support Enforcement Division, handed in a proposal and supported this bill **EXHIBIT(jus12a01)**.

Donald Erickson, handed in a statement **EXHIBIT(jus12a02)**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if this bill would apply to one parent in state and one living out of state. **Amy Pfeifer** answered that a support agency would address the review and modification dealing with a parent living out of state. She stated that a question would arise whether there would be jurisdiction over the party.

SEN. O'NEIL asked if Montana could have jurisdiction over that court order. **Amy Pfeifer** remarked that if the person had lived in the state with the child then it would bring up common principle issues, but the Montana District Court has continuing jurisdiction to modify its order.

SEN. DUANE GRIMES asked if the division would have to go to all of the district courts to achieve approval. **Amy Pfeifer** stated that the division has to provide this service for review and modification either through the district court process or the division will provide it administratively. She felt that this bill was the best answer to provide the service within compliance of federal law and it is done in the most efficient and effective manner for the state.

SEN. GRIMES asked if the district court would approve the process in advance. **Amy Pfeifer** said the division sends a notice to the district court judge and it is filed, then the parties receive notice.

SEN. GRIMES asked if they were to go through the district court procedures would that create a big fiscal note. **Amy Pfeifer** answered yes.

SEN. GRIMES asked if this would create any different procedures and if people in these circumstances would be treated any differently and how. **Amy Pfeifer** answered that everyone is treated the same, there is an extra step in filing the order with the Montana District Court. She continued to mention that if it is an order of another state then those people will be done with the order without having to go to district court.

{Tape 1; Side B}

SEN. O'NEIL asked how much money the federal government gives to the state or to the division in order to determine child support orders. **Amy Pfeifer** said that the funding structure has 66% of the costs paid directly by the federal government and that the other 34% of the funding is the state's special revenue account made up of incentives that the federal government gives for performance.

Closing by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, said that the child support enforcement laws nation wide are very effective because every state has an agency and they work very well together to make sure the processes are relatively close. He felt that the key to getting this bill through is to have the process done within the six month period without using attorneys. He also commented that if the process is done efficiently, then the correct calculations will get done and both parties would be able to get through the process.

EXECUTIVE ACTION ON SB 1

Motion: **SEN. GRIMES** moved that **SB 1 BE AMENDED. EXHIBIT(jus12a03)**

Discussion:

SEN. GRIMES explained the amendments and attempts to define blacklisting. He said these amendments add clarity for the bill.

Vote: Motion **carried unanimously.**

Motion: **SEN. GRIMES** moved that **SB 1 DO PASS AS AMENDED.**

Discussion:

SEN. HALLIGAN asked if an employer, giving a reference, would be exempted from blacklisting. **Valencia Lane, Legislative Staff,** said the intent of the amendment does not change individual

employment references and there is no change between the amendment and the way the bill was originally drafted.

SEN. HALLIGAN asked if the existing law allows an employee to ask for a reason for being fired. **Valencia Lane** said that had not changed.

SEN. HALLIGAN asked if he was contacted to give a reference and did not explain all the reasons that were stated in the original letter, would this be allowed in the bill. **Valencia Lane** said that it would protect the employee under defamation law. She added that the intent of this bill was to make it clear and that employment references are subject to defamation laws.

SEN. STEVE DOHERTY said he understood that former employees could receive information and the definition of duress seems to mean either the employer giving permission to view the reference or the employee does not get the job. **SEN. GRIMES** commented that if duress was correct then it would not be effective.

CHAIRMAN LORENTS GROSFIELD read the definition of "duress" from code 24-0-2.

SEN. GRIMES mentioned that Title 45 uses deception along with duress. He also said that since the word is used in these contexts he would go ahead and research it with the attorneys before the bill gets out so there wouldn't be a loophole.

Vote: Motion **carried 6-3** with **SEN. DOHERTY**, **SEN. HALLIGAN** and **SEN. PEASE** voting no.

EXECUTIVE ACTION ON SB 12

Motion: **SEN. HALLIGAN** moved that **SB 12 BE AMENDED**. Amendments were handed out **EXHIBIT(jus12a04)**.

Discussion:

Valencia Lane explained the amendments and how the language defined "good faith" and made it more clear.

SEN. GRIMES asked if Section 2 could be left with amendments and Section 1 struck out.

SEN. DOHERTY felt the testimony presented was directly for Section 2 and the amendments cleared that up.

Substitute Motion: SEN. DOHERTY made a substitute motion
Striking Section 1 of the Amendments.

Discussion:

SEN. JERRY O'NEIL commented that Section 2 only applies to chapter 72 of the codes and Section 1 would apply to the entire codes. He felt that it would not be appropriate to strike Section 1.

CHAIRMAN GROSFIELD said that Section 2 fixes the issue with respect to workers compensation and Section 1 would fix this issue in a proactive sense with respect to other investigatory entities.

SEN. HALLIGAN said that he thought it was the intent of the testimony presented that within the child abuse and neglect codes someone would be immune from liability unless the report is based on malice.

SEN. O'NEIL said by striking Section 1 they may not need Section 2.

CHAIRMAN GROSFIELD commented that it is a matter of putting agencies on direct notice.

SEN. O'NEIL said that if they were to strike Section 1 a reference may be placed in Title 72 stating that immunity is granted as per Section 2.

CHAIRMAN GROSFIELD said that there are several hotlines and ways to provide information and this language occurs in several sections of the law.

SEN. DOHERTY wondered if someone reported a caseworker wouldn't they be provided for with their individual immunity in the case of reporting a suspected child abuse. He went on to add that within the amendments it becomes broad by striking Section 1.

CHAIRMAN GROSFIELD said that TipMont was a program that the department began on their own and it may not be covered. This hotline is through the Fish, Wildlife and Parks and is done by rule making.

SEN. O'NEIL felt that if the committee passed this law then the existing law may be passed twice.

SEN. GRIMES said that immunity from reporting fraudulent activities was in places necessary and the committee may be taking care of it referenced to an "umbrella approach".

SEN. DOHERTY commented that the sponsor, who brought this problem forward, adds to the notion of attempting to collect all of the false reporting statutes, but is a huge leap outside the bounds of the bill.

SEN. GRIMES felt that this subject would go broader and have more of an impact than what is being conceived in this committee.

Vote: Substitute motion **carried 5-4** with **SEN. HOLDEN, SEN. BISHOP, SEN. O'NEIL** and **CHAIRMAN GROSFIELD** voting no.

Motion/Vote: **SEN. DOHERTY** moved that **SB 12 DO PASS AS AMENDED**. Motion **carried unanimously**.

EXECUTIVE ACTION ON SB 40

Motion: **SEN. HALLIGAN** moved that **SB 40 DO PASS**.

Discussion:

SEN. HOLDEN asked if the sponsor talked about the costs involved with this bill. **CHAIRMAN GROSFIELD** said the sponsor did visit with the department and the fiscal note didn't seem to be helpful.

Vote: Motion **carried unanimously**.

EXECUTIVE ACTION ON SB 177

Discussion:

Valencia Lane handed out amendments **EXHIBIT(jus12a05)**. She explained the amendments.

Motion: **SEN. HOLDEN** moved **SB 177 17701.AVL TO BE ADOPTED AS AMENDED**.

Vote: Motion **BE ADOPTED AS AMENDED carried unanimously**.

Motion: **SEN. GRIMES** moved **SB 40 17702.AVL Sections 1, 3, 4, 5 and 6 BE ADOPTED AS AMENDED**.

Discussion:

SEN. HALLIGAN asked what reasonable endangerment of a child meant. **CHAIRMAN GROSFIELD** explained that the example was given in the testimony, if a child was to undergo surgery whereas having anesthesia could be risky and the parents are briefed by the anesthesiologist prior to surgery and this would be cause for reasonable endangerment.

SEN. HALLIGAN said if there was serious physical injuries there would be endangerment causing problems. He felt that under the existing constitutional law, with the abortion issue, the minor has rights of privacy and a parent shouldn't be able to override at any time.

SEN. HOLDEN felt that this shouldn't be turned into an abortion bill and that was not the intent during testimony.

Vote: Motion **failed 2-7** with **SEN. GRIMES** and **SEN. BISHOP** voting yes.

Motion/Vote: **SEN. HALLIGAN** moved that **SB 177 BE TABLED**. Motion **carried 7-2** with **SEN. HOLDEN** and **SEN. BISHOP** voting no.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus12aad)